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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

ORIGINAL  
DEPARTMENT OF TRANSPORTATION  
DOCKET #

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Petition of

UNITED PARCEL SERVICE CO.  
(DHL Airways, Inc.)

Docket OST-2002-13089

In the Matter of

COMPLIANCE WITH U.S. CITIZENSHIP  
REQUIREMENTS OF DHL AIRWAYS, INC.

Docket OST-2002-13787

Third-Party Complaint of  
United Parcel Service

CONSOLIDATED ANSWER OF DHL AIRWAYS TO  
AMENDMENT NO. 1 TO COMPLAINTS

Communications with respect to this document should be sent to:

Steven A. Rossum  
Senior Vice President - Corporate  
Finance & General Counsel  
**DHL AIRWAYS, INC.**  
P.O. Box 66633  
Chicago, IL 60666-0633  
(847) 842-6313  
(847) 842-6303 (fax)  
srossum@dhlairways.com

Stephen H. Lachter  
**LACHTER & CLEMENTS LLP**  
1150 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 862-4321  
(202) 835-3219 (fax)  
lachter@starpower.net

**COUNSEL FOR DHL AIRWAYS, INC.**

December 11, 2002

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

Petition of	)	
	)	
UNITED PARCEL SERVICE CO.	)	<b>Docket OST-2002-13089</b>
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	)	

In the Matter of	)	
	)	
COMPLIANCE WITH U.S. CITIZENSHIP	)	<b>Docket OST-2002-13787</b>
REQUIREMENTS OF DHL AIRWAYS, INC.	)	
	)	
Third-Party Complaint of	)	
United Parcel Service	)	
	)	

**CONSOLIDATED ANSWER OF DHL AIRWAYS TO  
AMENDMENT NO. 1 TO COMPLAINTS**

On December 3, 2002, United Parcel Service Co. ("UPS") filed with the Docket Section a Motion for Leave to File An Otherwise Unauthorized Document and Amendment No. 1 to its Complaint in Docket OST-2002-13089. Also on December 3, 2002, UPS filed Amendment No. 1 to its Third-Party Complaint in Docket OST-2002-13787.<sup>1</sup>

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<sup>1</sup> While both pleadings were not filed in the Docket Section until December 3, 2002, the documents were dated November 26, 2002 and purportedly were served on that date. Counsel for DHL Airways received a copy of one pleading by first class mail on November 27, 2002 and a copy of the second, also by first class mail, on December 2, 2002. Answers to Complaints, of course, are due "within fifteen (15) days of the date of service" (14 CFR 302.405(a)), while answers to Motions are due "within seven (7) days after the motion is served" (14 CFR 302.11(c)). To avoid any confusion, counsel for DHL Airways communicated with counsel for

In substance, the UPS Motion and Amendments seek the inclusion in both dockets of a letter addressed to Assistant Secretary Read Van de Water (dated November 18, 2002) from Senator John D. Rockefeller IV supporting the position of UPS that an investigation into the citizenship of DHL Airways, Inc. ("Airways") be commenced before an Administrative Law Judge. Airways has no objection to inclusion of the letter in both dockets since, as *ex-parte* communications, Department rules and practice require that letters of this sort be placed in the correspondence section of the public docket (See, 14 CFR Part 300, and section 300.3).

Airways strongly objects, however, to the suggestion by UPS that various assertions in the letter be accorded "meaningful weight" in the Department's decision-making process, or that these assertions are relevant to either proceeding.

The statements in the letter, drafted to support UPS's position, are not "facts," but simply the Senator's conclusions. To the extent that the letter refers to "facts" supposedly contained in documents Airways provided the Department as part of its informal review, the best and only evidence of the facts are the documents themselves, not paraphrases of, or oral "reports," made during off-the-record, informal discussions with the staff of the Department's Office of Inspector General ("OIG"). In any event, the OIG apparently intends to submit a written report of its review of the procedures the Department uses in continuing fitness

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UPS and the parties have agreed that DHL Airways would file its Answer to the UPS pleadings by December 11, 2002. Under these circumstances, and to the extent deemed necessary, DHL Airways respectfully requests leave to file this Answer to Amendment No. 1 in Docket OST-2002-13787 and to the virtually identical Motion and Amendment No. 1 in Docket OST-2002-13089.

matters, which will include the Department's review of the change in Airways' ownership. To the extent the letter seeks to marshal alleged "facts" in support of the UPS position, the letter should be considered, at best, as an *ex parte* statement of position to which no weight may be given under the Department's Rules of Practice.

In any event, several key statements in the letter simply are incorrect, as the Department well knows, or are taken out of context. For example, the statement that William Robinson, the majority owner of Airways, received a "windfall" by selling "his stake in DHL's U.S. holding company" (Rockefeller letter, p. 2) suggests something illegal or underhanded. The simple fact is that Mr. Robinson, like all the other shareholders of the previous DHL network entities, sold his interest; in Mr. Robinson's case to focus on Airways. Whether or not the purchase amounted to a gain on his original investment (Mr. Robinson was, after all, one of the founders of the DHL network), it was no more of a "windfall" than are the proceeds received by any shareholder selling an interest in a certificated airline, or indeed a shareholder selling an interest in any business. The important thing is that Mr. Robinson invested a substantial amount of his personal wealth in Airways, providing the financial basis for Airways to continue and expand its business.

Similarly, the suggestion that something is amiss because "the mandatory 75 percent representation on DHL Airways' Board of Directors is comprised only of that one American citizen [Robinson] and two American business consultants to him" is a strawman designed to suggest something sinister. On the contrary, the Board was structured both to comply with the specific requirements of the statute,

*and to insure that Mr. Robinson, who holds 75 percent of the voting interest in the company, has absolute control of the Board.*

As previously noted,<sup>2</sup> Airways' bylaws provide for four directors, three of whom are appointed by Mr. Robinson and are U.S. citizens, and one who is appointed by Holdings. Airways' Chairman of the Board and C.E.O. was, until his sudden and untimely death in August, Joseph R. O'Gorman, a well-known U.S. airline executive hired by Mr. Robinson to lead Airways after the reorganization. While an executive search is underway for Mr. O'Gorman's successor, Vicki Bretthauer, Senior Vice President of Operations, now also is serving as interim C.E.O. Ms. Bretthauer has spent almost 20 years in the airline business and is a veteran of three domestic airlines. When the new C.E.O. is hired, he or she will take over Mr. O'Gorman's seat on the Board.

Another example is the statement that "the German owned parent. . . owns 30 percent of the aircraft operated by DHL Airways," which is incorrect: First because the minority shareholder in Airways, DHL Holdings (USA), Inc. ("Holdings"), a subsidiary of Deutsche Post AG ("DP"), is not Airways' "parent;" and second because none of the aircraft are owned by any DP-related entity. Four (4) of Airways' thirty eight (38) aircraft are, however, subleased from Holdings, an indirect DP subsidiary. The lease-in of these four aircraft by Holdings from certain financial institutions is, of course, a residual effect of the reorganization

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<sup>2</sup> See, Consolidated Answer of DHL Airways, September 6, 2002, Docket OST-2002-13089.

transaction. And, in any case, the terms of the subleases under which Airways obtains the right to use the aircraft were negotiated at arm's length.

Also, the purchases and leases of additional aircraft to expand the Airways' fleet (for example, an additional aircraft was added to the fleet to meet the transportation requirements of the U.S. military) have been made from unrelated third-party sources.<sup>3</sup>

The letter in support of UPS's position from Senator Rockefeller is not at all unusual in the regulatory context, where it is customary for elected officials to file supporting materials in Department proceedings.<sup>4</sup> The Department, however, should reject UPS's suggestion that the allegations in the letter (drafted to support UPS) are entitled to "meaningful weight in determining DHL Airways' citizenship," when the actual facts are available in materials filed with the Department.

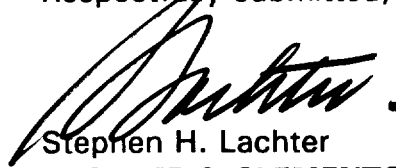
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<sup>3</sup> In this regard, see the Answer of DHL Airways to Motions of Lynden Air Cargo, December 4, 2002, Dockets OST-2002-13590 and 13089.

<sup>4</sup> UPS has demonstrated in the past a prodigious ability to marshal enormous political support for its position in Department cases. See, for example, the extensive political support garnered by UPS in the *U.S.- China Air Services (2001) Case*, Order 2001-1-6, January 10, 2001 where, according to the UPS press release, "UPS's application for the China air rights received strong support from numerous businesses, labor unions and elected officials. . . . UPS's efforts were endorsed by . . . 358 members of Congress, 37 governors and more than 1,100 businesses" (UPS Press Release, November 21, 2000).

Under these circumstances, the letter should be accepted by the Department only as a statement of position not, as UPS would have it, as "evidence" of "facts" to be relied upon to support agency decision-making.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Lachter", followed by a period.

Stephen H. Lachter

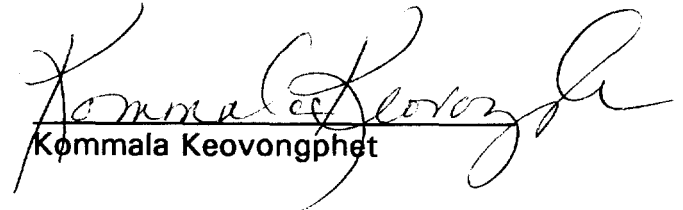
**LACHTER & CLEMENTS LLP**

**COUNSEL FOR DHL AIRWAYS**

December 11, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have served copies of the foregoing Consolidated Answer of DHL Airways to Amendment No. 1 to Complaints this 11<sup>th</sup> day of December, 2002 by first class mail, postage prepaid to all persons on the attached Service List.



Kommala Keovongphet



## SERVICE LIST

Samuel Podberesky  
Asst General Counsel for Aviation  
Enforcement & Proceedings  
U.S. Department of Transportation  
400 7<sup>th</sup> Street, SW, C-70, Rm 4116  
Washington, DC 20590

Steven R. Okun  
UNITED PARCEL SERVICE CO.  
316 Pennsylvania Avenue, SE  
Suite 304  
Washington, DC 20003

Patrick Murphy  
Mark Gerchick  
Gerchick-Murphy & Associates  
1134 19<sup>th</sup> Street, NW  
Washington, DC 20007

P. Charles Altimari  
Daniel N. Tenfelde  
UNITED PARCEL SERVICE CO.  
1400 No. Hurstbourne Parkway  
Louisville, KY 40223

Fred F. Fielding  
Edwin O. Bailey  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Donald H. Horn  
Asst General Counsel  
for International Law  
US Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

Bruce H. Rabinovitz  
WILMER CUTLER & PICKERING  
2445 M Street, NW  
Washington, DC 20037-1420

David L. Vaughan  
Michael J. Francesconi  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036

The Hon. Rosalind A. Knapp  
Deputy General Counsel  
U.S. Department of Transportation  
400 Seventh Street, SW, C-2, Rm 10428  
Washington, DC 20590

Paul M. Geier  
Assistant General Counsel for  
Litigation  
U.S. Dept of Transportation  
400 7th Street, SW, C-30, Rm 4102  
Washington, DC 20590

Patricia L. Thomas  
Chief of the Air Carrier Fitness Division  
US Department of Transportation  
400 Seventh Street, SW, X-50  
Washington, DC 20590

M. Rush O'Keefe, Jr., VP Reg. Affairs  
Sarah S. Prosser, Managing Director  
Thomas F. Donaldson, Jr., Sr. Atty  
Federal Express Corporation  
3620 Hacks Cross Building B-3d Fl.  
Memphis, TN 38125

Susan McDermott  
Deputy Asst Secretary for Aviation  
and International Affairs  
US Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

The Honorable Kirk Van Tine  
General Counsel  
US Department of Transportation  
400 Seventh Street, SW, Rm 10428  
Washington, DC 20590

Earl A. Boyanton, Jr.  
Asst Deputy Under Secretary for  
Defense for Transportation Policy  
Department of Defense  
3500 Defense Pentagon, Rm 3E114  
Washington, DC 20301-3500

Hon. Read van de Water  
Asst Secretary for Aviation &  
International Affairs  
Department of Transportation  
400 Seventh Street, SW, Rm 10232  
Washington, DC 20590

The Honorable John D. Rockefeller IV  
United States Senate  
531 Hart Building  
Washington, DC 20510